

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

MONDAY, THE 18TH JUNE 2007 / 28TH JYAISHTA 1929

WP(C).No. 3945 of 2007(T)

PETITIONER:

P.A. NOUSHAD, S/O.LATE ABDUL KHADAR,
RESIDING AT PUTHUMANAKARA HOUSE, P.O. ANTHIKADU,
THRISSUR.

BY ADV. SRI.T.RAJASEKHARAN NAIR

RESPONDENTS:

1. THE ANTHIKADU GRAMA PANCHAYATH,
REPRESENTED BY THE SECRETARY, ANTHIKADU P.O.,
THRISSUR.
2. THE SECRETARY,
ANTHIKADU GRAMA PANCHAYATH, OFFICE OF THE
ANTHIKADU GRAMA PANCHAYATH, ANTHIKADU P.O., THRISSUR
ADDL. RESPONDENTS 3 TO 8 IMPEADED.
3. BADHRUDDHIN. P.A., PUTHUMANKKARA HOUSE,
P.O. ANTHIKKAD, PADIYAM VILLAGE, MANGATTUKKARA DESOM,
THRISSUR TALUK.
4. ASHARAF, PUTHUMANAKKARA ABDUL KHADER,
(H/O. FOUSIA ASHARAF, RESIDING AT MUNNAKKAPARAMBIL
HOUSE, P.O. THELAPPILLY, IRINJALAKUDA.
5. USMAN, PUTHUMANAKKARA HOUSE,
P.O. ANTHIKKAD, PADIYAM VILLAGE, MANGATTUKARA DESOM,
THRISSUR TALUK.

6. FATHIMA, MAYANVEETIL HOUSE,
P.O. THAMPANKADAVU, THALIKULAM,
CHAVAKKAD TALUK.

7. MYMUNA HIDAYATHULLA, PANIKKAVEETIL HOUSE,
THRITHALLUR VILLAGE, DESOM, THRISSUR TALUK.

8. MARIYATHU, PUTHUMANAKKARA HOUSE,
P.O. ANTHIKKAD, PADIYAM VILLAGE, MANGATTUKARA DESOM,
THRISSUR TALUM.

THE ABOVE RESPONDENTS ARE IMPEADED AS ADDITIONAL
RESPONDENTS 3 TO 8 AS PER ORDER DT. 14.2.2007 IN I.A. 2342/2007.

ADDL. R4 & R5 BY ADV. SRI.V.CHITAMBARESH
SRI.T.C.SURESH MENON
SRI.M.K.DILEEP KUMAR
R1 TO R3 BY SC SRI.V.GOPIKRISHNAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 18/06/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

K.M.JOSEPH, J.

WP.(C) No.3945 of 2007

Dated this the 18th day of June, 2007

JUDGMENT

Petitioner challenges Ext.P3. He seeks a direction to consider Ext.P5 appeal after affording an opportunity of hearing to him and pass orders on the same.

2. Case of the petitioner in brief is as follows:

Petitioner is a licensee of a rice and flower mill. Petitioner is conducting the mill. After the death of Sri. Abdul Khader, who was the licensee, licence has been issued in the name of the petitioner and he is conducting the same. It is stated that the income from the said mill is the only source of livelihood for him and his family. By Ext.P3 notice issued by the Panchayat, it is stated that he has to produce the document showing the ownership of the building in which the flower mill is situate. It is stated that it is issued on behalf of certain interested parties.

2. There is no dispute that O.S. 1235 of 2006 is pending seeking partition before the Sub Court, Thrissur. The said suit is filed by the legal heirs of petitioner's father. Petitioner is one of the parties in the

said suit. It is the contention of the petitioner that he can produce the relevant documents only after the disposal of the suit. It is stated that Ext.P3 notice issued by the second respondent is unsustainable. He submits that he has preferred Ext.P5appeal.

3. Heard counsel appearing on behalf of the parties. Sri.V.Chitambaresh opposes the relief sought for by the petitioner. He submits that the petitioner is only a co-sharer and by virtue of the order passed by this court respondents 4 and 5, who are also entitled to the income from the flower mill are being deprived of the same and the petitioner alone is enjoying the same.

4. Learned counsel appearing on behalf of respondents 3, 6, 7 and 8 of course does not oppose the prayer of the petitioner. I record the said stand on behalf of respondents 3, 6, 7 and 8. The fact remains that the property is admittedly the common property in which the petitioner is only a sharer.

5. Learned counsel appearing on behalf of respondents 4 and 5 also points out that they are now disabled from moving for appointment of a Receiver only as a result of the order passed by this

court as the civil court will be disabled by the order permitting the petitioner to continue. It is submitted by learned counsel for respondents 4 and 5 that respondents 4 and 5 will move an application seeking appointment of Receiver and a decision can be taken by the Civil Court, in which the claims of the petitioner will also be considered in accordance with law. It is open to the petitioner to lay such claim as he is advised to make.

In such circumstances, the writ petition is disposed of as follows:

I record the submission of the learned counsel for respondents 4 and 5 that they will make an application for appointment of a receiver in O.S. 1235 of 2006 within a period of two weeks from the date of receipt of a copy of this judgment. Till such time as the application is disposed of by the civil court, the interim order passed by this court will continue. The Sub Court, Thrissur, before which the suit is pending and before which the application for appointment of receiver is to be filed will dispose of the said application as expeditiously as possible.

sb.

(K.M. JOSEPH, JUDGE)

